

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2,684,138: PAVERCAT
Registered on the Principal Register on February 4, 2003, in International Class 7

CATERPILLAR INC.,

Petitioner,

v.

PAVE TECH, INC.,

Registrant.

05-12-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #78

Cancellation No. 41,776

CERTIFICATE UNDER 37 C.F.R. 1.10:

'Express Mail' mailing number: EL984580757US

Date of Deposit: May 11, 2004

The undersigned hereby certifies that this Transmittal Letter and the paper or fee, as described herein, are being deposited with the United States Postal Service 'Express Mail Post Office To Addressee' service under 37 CFR 1.10 and is addressed to: Box TTAB, 2900 Crystal Drive, Arlington VA 22202.

By:

Rebecca J. Bishop
Rebecca J. Bishop

**PAVE TECH'S BRIEF IN RESPONSE TO CATERPILLAR'S MOTION FOR
PROTECTIVE ORDER**

In response to the Motion for Protective Order filed by Petitioner, Caterpillar Inc. ("Caterpillar") on April 30, 2004, Registrant Pave Tech, Inc. ("Pave Tech") hereby states as follows. As detailed below, Caterpillar represented in February that it would send a settlement proposal to Pave Tech shortly. Based on this representation, Pave Tech withheld service of its deposition notices. Nearly two months later, as the discovery period was coming to a close, Caterpillar still had not sent any settlement proposal. In order to give Caterpillar reasonable notice of its depositions, Pave Tech served three deposition notices on April 21, 2004. In response, Caterpillar indicated it had a scheduling conflict with the noticed dates. Pave Tech offered to reschedule the depositions outside of the discovery period as a courtesy to Caterpillar.

Instead, Caterpillar proceeded to request an extension of the discovery deadline, untimely notice a second round of admittedly unnecessary depositions, and erroneously claim that counsel for Pave Tech agreed to an extension of time. As detailed below, Pave Tech never stipulated to an extension of the discovery period and was not allowed to take its timely noticed depositions.

1. At the outset, Pave Tech wishes to note its regret that Caterpillar felt it necessary to involve the Trademark Trial and Appeal Board ("the Board") in this discovery dispute. It will be clear by Pave Tech's response herein that involvement of the Board was simply not necessary in this case. Mindful that the Board looks with extreme disfavor on parties who cannot resolve discovery disputes amongst themselves, Pave Tech feels an obligation to respond to Caterpillar's Motion given the erroneous nature of its allegations and unfounded personal attacks therein.

2. By Order of the Board, the discovery period in this matter closed on May 5, 2004. Exhibit A, February 25, 2004 Consented Motion to Extend Discovery and Testimony Periods and March 20, 2004 TTAB Order granting Motion.

3. On February 23 and 24, 2004, Caterpillar took two extensive depositions in this action: Steve Jones, President of Pave Tech and Robert Cramer, Field Services Manager of Pave Tech, respectively. At that time, Caterpillar represented that it would be sending a settlement proposal shortly. Exhibit F, Declaration of Steve Jones. Given the possibility for settlement, Pave Tech waited to serve any deposition notices. Exhibit F, Declaration of Steve Jones.

4. Nearly two months later, Caterpillar still had not sent any settlement proposals. Because the discovery period was drawing to a close and Pave Tech wanted to ensure it provided Caterpillar with reasonable notice of depositions, Pave Tech served its first Notices of Deposition in this case on Caterpillar on April 21, 2004. Exhibit F, Declaration of Steve Jones; Exhibit B, Pave Tech Notices of Deposition. Pave Tech noticed these depositions for nearly two

weeks later on May 3, 4 and 5, 2004, before the close of the discovery period. Had Caterpillar not represented to Pave Tech that it would be sending a settlement proposal, Pave Tech would have served these deposition notices much earlier. Exhibit F, Declaration of Steve Jones.

5. On April 22, 2004, Pave Tech received e-mail notification that Caterpillar's counsel was unavailable May 3-5. Exhibit C, April 22, 2004 e-mail from Caterpillar. In the same e-mail, Caterpillar also informed Pave Tech that Caterpillar may wish to take additional depositions in this action and that the parties "will need to agree to extend the discovery period" to allow for those additional Caterpillar depositions. In short, Caterpillar indicated that it was somehow Pave Tech's obligation to agree to an extension of the discovery period so that Caterpillar would have the opportunity to conduct discovery it had already had months to conduct.

6. Despite Caterpillar's declaration on April 22, 2004, that it wished to take additional depositions, it failed to serve Notices of Deposition on Pave Tech at that time.

7. Both counsel for Pave Tech and counsel for Caterpillar attempted to contact each other repeatedly for the next week. Finally, on April 27, 2004, Pave Tech's counsel spoke with Caterpillar's counsel, Nerissa Coyle McGinn, regarding the May 3-5 depositions. Ms. McGinn indicated that May 3, 4 and 5 were inconvenient for Caterpillar's counsel, who wished to attend a trademark conference on those days. Pave Tech repeatedly invited Ms. McGinn to provide alternate dates for those depositions that would be more convenient for Caterpillar's counsel. To date, no alternate dates have been provided. Exhibit E, Declaration of Rebecca J. Bishop.

8. Separate and apart from any discussion about Pave Tech's deposition notices, Caterpillar also requested a 60-day extension of the discovery period to allow Caterpillar to take two more depositions, in addition to the exhaustive depositions it had conducted in February.

Pave Tech notes that this request was made on April 27, 2004, just one week before the discovery period was set to close.

9. In response to Caterpillar's request for such a lengthy extension of time, Pave Tech's counsel stated, "60 days sounds excessive. I do not have a problem with a 30-day extension, *but I have to speak with my client before I can agree to anything.*" Exhibit E, Declaration of Rebecca J. Bishop. The conversation continued, but counsel for Pave Tech stated at least one more time that she had to speak with her client before agreeing to any type of an extension of the discovery period. Exhibit E, Declaration of Rebecca J. Bishop.

10. At that time, Caterpillar still had not served any Notices of Deposition on Pave Tech, despite the fact that the last days of the discovery period were quickly approaching in just one week.

11. Two days later, On April 29, 2004, Pave Tech received two deposition notices from Caterpillar by fax.¹ Exhibit G, Caterpillar's Notices of Deposition. As Caterpillar had waited so long to notice these depositions, the depositions were noticed untimely for dates occurring after the close of the discovery period, on May 12 and 14, 2004.

12. Given the previous discussion between the parties about an extension of time, it was clear that Caterpillar was attempting to corner Pave Tech into stipulating to an extension of the discovery period so that Caterpillar could take this second round of depositions, despite the fact that Caterpillar had waited until the final days of the discovery period to notice them, and Pave Tech had yet to take any of its own depositions.

¹ Caterpillar correctly states that this fax was sent on April 28, 2004, but as it was sent very late in the day, counsel for Caterpillar did not receive the materials until the next morning, April 29, 2004.

13. Not once during the entire discovery period did Caterpillar state its intent to take additional depositions, *until* Pave Tech noticed depositions of its own. It is clear that these deposition notices were retaliatory in nature.

14. Indeed, Caterpillar admitted to Pave Tech that it obtained sufficient information in its first round of depositions on the issue of likelihood of confusion. Exhibit D, April 28, 2004 fax from Caterpillar to Pave Tech. Accordingly, by Caterpillar's own admission, its Notices of Deposition were unnecessary, and, therefore, obviously designed to annoy, oppress or put undue burden and expense on Pave Tech in this matter.

15. Further, Caterpillar stated in the April 28 letter that if Pave Tech did not agree to settle the case on Caterpillar's terms, it would pursue additional depositions. Exhibit D, April 28, 2004 fax from Caterpillar. Therefore, the additional, unnecessary depositions were clearly a threatening maneuver to entice Pave Tech to settle.

16. Also on April 29, 2004, Pave Tech's counsel contacted Caterpillar's counsel to inform Caterpillar that Pave Tech had decided not to stipulate to any extension of the discovery period, but that, as a courtesy to Caterpillar, Pave Tech was willing to postpone its timely-noticed depositions currently scheduled for May 3-5 solely for the convenience of Caterpillar's counsel, to allow Caterpillar's counsel to attend a trademark conference. As an extension of the discovery period was the only way Caterpillar would be able to take additional depositions, Ms. McGinn desperately argued that counsel for Pave Tech had somehow already orally agreed to an extension of time. *This is simply not true.* No fewer than twice during the prior conversation did counsel for Pave Tech specifically state that she had to speak with her client before agreeing to any extension of the discovery period. Exhibit E, Declaration of Rebecca Bishop; Exhibit F, Declaration of Steve Jones; Exhibit H, April 29, 2004 letter from Pave Tech to Caterpillar. It is

clear that either Ms. McGinn only heard what she wanted to hear, or she was attempting to twist words to suit her case.

17. Ms. McGinn then argued that an extension was necessary for both parties as the Pave Tech depositions needed to be rescheduled for a time outside of the set discovery period. Counsel for Pave Tech reminded Ms. McGinn that the Pave Tech deposition notices were timely noticed while Caterpillar's deposition notices were not, that Pave Tech was prepared to conduct the depositions on the dates noticed, and that it was Caterpillar's schedule conflict that was forcing the dates to be moved. Pave Tech's offer to amend the dates was a courtesy to Caterpillar, not an obligation. By this courtesy, Pave Tech was willing to extend the discovery period unilaterally for the convenience of Caterpillar, but an extension of time for both parties was unnecessary, especially given the fact that Caterpillar had not timely noticed its second round of depositions. Again, Pave Tech invited Ms. McGinn to propose alternate dates for the Pave Tech depositions, which Ms. McGinn failed to do.

18. The next day, on April 30, 2004, instead of providing for alternate dates later in May for the Pave Tech depositions, Caterpillar filed its Motion for Protective Order, along with a Motion for Extension of Discovery and Testimony Periods.

19. In its Motion for Protective Order, Caterpillar has requested that the Board issue a Protective Order to prevent the May 3-5 depositions sought by Pave Tech in this action from proceeding on the dates noticed.

20. As the May 3-5 dates have already passed, Caterpillar's Motion for Protective Order is moot. By the timing of its filing,² it has successfully stayed Pave Tech's timely-noticed depositions to its advantage, leaving Pave Tech powerless to stop the delay.

21. As set forth in the Declaration of Rebecca J. Bishop filed herewith in support of this Motion as Exhibit E, Pave Tech's counsel attempted in good faith to resolve this discovery dispute but was unable to reach an accommodation with Caterpillar's counsel.

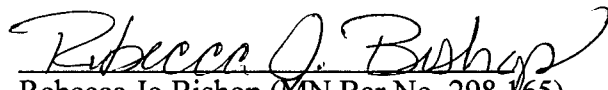
Accordingly, Pave Tech respectfully requests that the Board declare Caterpillar's Motion for Protective Order moot, and issue an Order requiring Caterpillar to produce the noticed deponents in a timely manner, on dates to be agreed upon by the parties.

Pave Tech further requests that the Board deny Caterpillar's Motion for Extension of Discovery and Testimony Periods, Pave Tech's Brief in Response to such Motion filed concurrently herewith.

Respectfully submitted,

PAVE TECH, INC.

By its attorneys,



Rebecca Jo Bishop (MN Bar No. 298,165)

Karen D. McDaniel (MN Bar No. 194,554)

ALTERA LAW GROUP

6500 City West Parkway

Suite 100

Eden Prairie, MN 55344

Telephone: (952) 253-4100

Fax: (952) 912-0574

Michael J. O'Loughlin (MN Bar No. 81,607)

MICHAEL J. O'LOUGHLIN & ASSOC, P.A.

400 South 4th Street

Dated: May 11, 2004

² Pave Tech notes that it did not receive Caterpillar's Motions until very late in the day on Friday, after the offices of the Board had closed. Pave Tech's properly noticed depositions were to begin the following Monday morning, leaving Pave Tech no alternative but to succumb to Caterpillar's delay.

1012 Grain Exchange Building
Minneapolis, MN 55415
Telephone: (612) 342-0351
Fax: (612) 342-2399

Exhibit A

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 2,684,138: PAVERCAT
Registered on the Principal Register on February 4, 2003, in International Class 7

CATERPILLAR INC.,

Petitioner,

v.

PAVE TECH, INC.,

Respondent.

75/904,827

Cancellation No. 41,776



05-12-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #78

03-01-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #66

CONSENTED MOTION TO EXTEND DISCOVERY AND TESTIMONY PERIODS

Petitioner hereby moves to extend the discovery period and all subsequent testimony periods for thirty (30) days in the above proceeding as follows:

Discovery Period to close:	May 5, 2004
30-day testimony period for party in position of Plaintiff to close:	August 5, 2004
30-day testimony period for party in position of defendant to close:	October 4, 2004
15-day rebuttal testimony period for plaintiff to close:	November 17, 2004

The parties are responding to written discovery requests. This additional time is necessary to exchange documents, prepare for the depositions, and complete discovery before proceeding with the testimony period.

Certificate of Mailing
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington Virginia 22202-3514 on February 25, 2004.

Deanna Perez

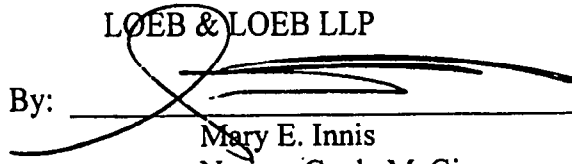
The parties respectfully submit that this constitutes good cause for the requested extension. Respondent's attorney, Michael J. O'Loughlin, consented to this extension via telephone on February 25, 2004.

Respectfully submitted,

LOEB & LOEB LLP

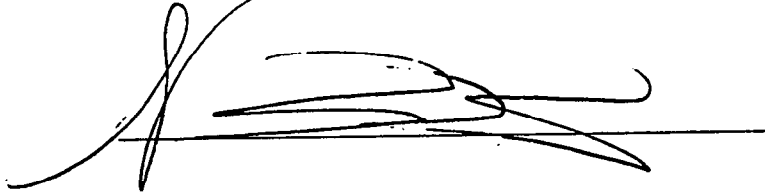
Date: February 25, 2004

By: _____


Mary E. Innis
Nerissa Coyle McGinn
200 South Wacker Drive
Suite 3100
Chicago, Illinois 60606
Telephone: (312) 674-4780
Facsimile: (312) 674-4779

CERTIFICATE OF SERVICE

I, Nerissa Coyle McGinn, hereby certify that I caused a copy of the foregoing
CONSENTED MOTION TO EXTEND DISCOVERY AND TESTIMONY PERIODS to
Michael J. O'Loughlin, Micheal J. O'Loughlin & Associates, P.A., 400 South 4th Street, 1012
Grain Exchange Building, Minneapolis, Minnesota 55415 by first class mail, postage prepaid on
February 25, 2004.

A handwritten signature in black ink, appearing to be "Nerissa Coyle McGinn", written over a horizontal line.

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: March 20, 2004

Opposition No. 92041776

CATERPILLAR INC.

v.

Pave Tech, Inc.

ANGELA CAMPBELL, PARALEGAL SPECIALIST:

Opposer's/Applicant's consented motion filed March 1,
2004 to extend discovery and trial dates is granted.
Trademark Rule 2.127(a).

The discovery and trial dates are reset in accordance
with opposer's/applicant's motion.

Exhibit B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2,684,138: PAVERCAT
Registered on the Principal Register on February 4, 2003, in International Class 7

CATERPILLAR INC.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 41,776
)	
PAVE TECH, INC.,)	
)	
Registrant.)	
)	

NOTICE OF DEPOSITION


PLEASE TAKE NOTICE that, on May 3, 2004, commencing at 9:30 a.m. and continuing until completed, Registrant, Pave Tech, Inc., will depose on oral examination Terry G. Sharp of Caterpillar Paving Products, Inc., a subsidiary of Caterpillar, Inc., located at 9401 85th Avenue North, Brooklyn Park, Minnesota 55445. The deposition will be held at the offices of Altera Law Group, LLP located at 6500 City West Parkway, Suite 100, Eden Prairie, MN 55344, or at such other place and time as counsel may agree. The deposition will take place pursuant to the Federal Rules of Civil Procedure before a notary public or before some other officer authorized by law to administer oaths by the laws of the United States or of the place where the examination is held, with such adjournments as to time and place as may be necessary. Counsel for Caterpillar is invited to attend and cross-examine.

Respectfully submitted,

PAVE TECH, INC.

By its attorneys,

Dated: April 21, 2004


Rebecca Jo Bishop (MN Bar No. 298,165)
Karen D. McDaniel (MN Bar No. 194,554)
ALTERA LAW GROUP
6500 City West Parkway

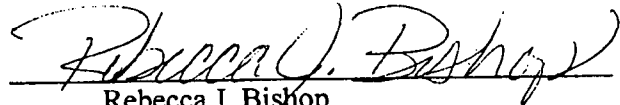
Suite 100
Eden Prairie, MN 55344
Telephone: (952) 253-4100
Fax: (952) 912-0574

Michael J. O'Loughlin (MN Bar No. 81,607)
MICHAEL J. O'LOUGHLIN & ASSOC, P.A.
400 South 4th Street
1012 Grain Exchange Building
Minneapolis, MN 55415
Telephone: (612) 342-0351
Fax: (612) 342-2399

CERTIFICATE OF SERVICE

I, Rebecca J. Bishop, hereby certify that on this 21st day of April, 2004, a true and correct copy of the foregoing document, NOTICE OF DEPOSITION, was served via e-mail delivery and first class mail postage prepaid on:

Mary E. Innis
Nerissa Coyle McGinn
LOEB & LOEB LLP
200 South Wacker Drive
Suite 3100
Chicago, Illinois 60606
(312) 674-4780
minnis@loeb.com
nmcginn@loeb.com


Rebecca J. Bishop

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2,684,138: PAVERCAT
Registered on the Principal Register on February 4, 2003, in International Class 7

CATERPILLAR INC.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 41,776
)	
PAVE TECH, INC.,)	
)	
Registrant.)	
)	


NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that, on May 4, 2004, commencing at 9:30 a.m. and continuing until completed, Registrant, Pave Tech, Inc., will depose on oral examination Gene Bolmarcich, Caterpillar's Senior Intellectual Property Attorney, Caterpillar, Inc. located at 100 Northeast Adams Street, Peoria, IL 61602. The deposition will be held at the offices of Howard & Howard Attorneys, P.C., One Technology Plaza, Suite 600, 211 Fulton Street, Peoria, Illinois 61602-1350, or at such other place and time as counsel may agree. The deposition will take place pursuant to the Federal Rules of Civil Procedure before a notary public or before some other officer authorized by law to administer oaths by the laws of the United States or of the place where the examination is held, with such adjournments as to time and place as may be necessary. Counsel for Caterpillar is invited to attend and cross-examine.

Respectfully submitted,

PAVE TECH, INC.

By its attorneys,


Rebecca Jo Bishop (MN Bar No. 298,165)
Karen D. McDaniel (MN Bar No. 194,554)
ALTERA LAW GROUP
6500 City West Parkway

Dated: April 21, 2004

Suite 100
Eden Prairie, MN 55344
Telephone: (952) 253-4100
Fax: (952) 912-0574

Michael J. O'Loughlin (MN Bar No. 81,607)
MICHAEL J. O'LOUGHLIN & ASSOC, P.A.
400 South 4th Street
1012 Grain Exchange Building
Minneapolis, MN 55415
Telephone: (612) 342-0351
Fax: (612) 342-2399

CERTIFICATE OF SERVICE

I, Rebecca J. Bishop, hereby certify that on this 21st day of April, 2004, a true and correct copy of the foregoing document, NOTICE OF DEPOSITION, was served via e-mail delivery and first class mail postage prepaid on:

Mary E. Innis
Nerissa Coyle McGinn
LOEB & LOEB LLP
200 South Wacker Drive
Suite 3100
Chicago, Illinois 60606
(312) 674-4780
minnis@loeb.com
nmcginn@loeb.com


Rebecca J. Bishop

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2,684,138: PAVERCAT
Registered on the Principal Register on February 4, 2003, in International Class 7

CATERPILLAR INC.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 41,776
)	
PAVE TECH, INC.,)	
)	
Registrant.)	
)	

NOTICE OF RULE 30(b)(6) DEPOSITION

PLEASE TAKE NOTICE that, on May 5, 2004, commencing at 9:30 a.m. and continuing until completed, Registrant, Pave Tech, Inc., will depose on oral examination Caterpillar, Inc. ("Caterpillar") located at 100 Northeast Adams Street, Peoria, IL 61062, on the topics set forth in attached Schedule A. The deposition will be held at the offices of Howard & Howard Attorneys, P.C., One Technology Plaza, Suite 600, 211 Fulton Street, Peoria, Illinois 61602-1350, or at such other place and time as counsel may agree.

Caterpillar is instructed to designate one or more witnesses most familiar with each category who will testify about each category, on Caterpillar's behalf, pursuant to Federal Rule of Civil Procedure 30(b)(6). Caterpillar is requested to provide and have available all documents previously called for production by Registrant to the extent not previously produced, specifically including but not limited to item 18 in Schedule A.

The deposition will take place pursuant to the Federal Rules of Civil Procedure before a notary public or before some other officer authorized by law to administer oaths by the laws of the United States or of the place where the examination is held, with such adjournments as to

time and place as may be necessary. Counsel for Caterpillar is invited to attend and cross-examine.

Respectfully submitted,

PAVE TECH, INC.

By its attorneys,

Dated: April 21, 2004



Rebecca Jo Bishop (MN Bar No. 298,165)

Karen D. McDaniel (MN Bar No. 194,554)

ALTERA LAW GROUP

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Suite 100

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Michael J. O'Loughlin (MN Bar No. 81,607)

MICHAEL J. O'LOUGHLIN & ASSOC, P.A.

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Fax: (612) 342-2399

SCHEDULE A

1. The business of Petitioner, "Petitioner" hereinafter referring inclusively to Caterpillar, Inc., its predecessors in interest, any parent entities, its subsidiaries and related organizations and the officers, directors, employees, agents and representatives thereof, collectively referred to as "Petitioner";
2. The marks of Petitioner, hereinafter defined as those trademarks, service marks and design marks alleged in the Notice of Opposition, collectively referred to as "the Caterpillar marks";
3. Petitioner's efforts to seek federal trademark and/or service mark protection for the Caterpillar marks and the present status of each such registration and application for the Caterpillar marks.
4. The use in commerce of the Caterpillar marks;
5. The goods and services on which the Caterpillar marks are used;
6. The advertising, marketing and promotion of all of Petitioner's products or services sold in connection with the Caterpillar marks.
7. The marketplace in which Petitioner's goods and services under the Caterpillar marks are marketed and sold, including channels of trade, how sales are made, the purchase decision, and delivery of the goods or services;
8. The current, prior and potential customers of Petitioner who purchase goods or services sold under the Caterpillar marks;
9. Industry trade shows, conventions and seminars attended by Petitioner;
10. Memberships held by Petitioner in industry organizations;
11. Petitioner's Pneumatic Cat Lift machine;
12. Petitioner's compact equipment;
13. Petitioner's skid steer loader equipment;
14. Any of Petitioner's products or services that Petitioner contends is similar to or performs the functions of Registrant's PAVERCAT equipment;
15. The paving industry, including but not limited to asphalt paving, general information about the marketplace of the paving industry, Petitioner's goods and services under the Caterpillar marks offered in the paving industry and the like;

16. The landscaping industry, general information about the marketplace of the landscaping industry, Petitioner's goods and services under the Caterpillar marks offered in the landscaping industry and the like;
17. The segmental paver industry, general information about the marketplace of the segmental paver industry, Petitioner's involvement or promotional activities in the segmental paver industry, including goods or services offered under the Caterpillar marks used in connection with the segmental paver industry, and the like;
18. The development, placement and removal of content on Petitioner's web site;
19. Any research, survey, trademark search, test, poll, interview, study or investigation related to Registrant, the mark PAVERCAT, or the Caterpillar marks, or relating to third-party trademarks or service marks incorporating in whole or in part the word CAT, either as a free standing designation or joined with other terms in a composite expression;
20. Petitioner's knowledge of third-party use, registration or application to register names, marks or terms which are composed in whole or in part of the word CAT or are or may be confusingly similar to or dilutive of the Caterpillar marks or the mark PAVERCAT;
21. Any of Petitioner's prior or current assertions of trademark rights against third parties regarding the Caterpillar marks, including past or current enforcement actions, oppositions, cancellations, state or federal lawsuits, settlement agreements and the like;
22. Registrant's use of the PAVERCAT mark;
23. The factual basis for Petitioner's allegation that there is a likelihood of confusion, mistake or deception caused by the co-existence of the Caterpillar marks and Registrant's mark PAVERCAT;
24. The factual basis for Petitioner's allegation that the registration of the trademark PAVERCAT is and will continue to be damaging to Petitioner;
25. All claimed instances of actual confusion, if any, caused by the co-existence of the Caterpillar marks and Registrant's mark PAVERCAT;
26. Any facts on which Petitioner intends to rely to support a contention that Petitioner sells equipment that performs the same functions as Registrant's PAVERCAT equipment;
27. Any facts on which Petitioner intends to rely to support a contention that Petitioner sells equipment in the same channel of trade in which Registrant sells its PAVERCAT equipment;

28. Identification and authentication of all documents produced in response to Registrant's discovery requests.

CERTIFICATE OF SERVICE

I, Rebecca J. Bishop, hereby certify that on this 21st day of April, 2004, a true and correct copy of the foregoing document, NOTICE OF RULE 30(b)(6) DEPOSITION, was served via e-mail delivery and first class mail postage prepaid on:

Mary E. Innis
Nerissa Coyle McGinn
LOEB & LOEB LLP
200 South Wacker Drive
Suite 3100
Chicago, Illinois 60606
(312) 674-4780
minnis@loeb.com
nmcginn@loeb.com

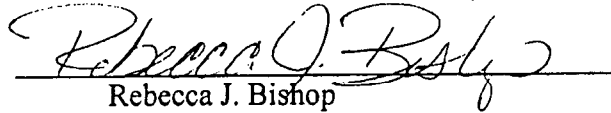

Rebecca J. Bishop

Exhibit C

-----Original Message-----

From: Mary Innis

Sent: Thursday, April 22, 2004 3:18 PM

To: 'rbishop@alteralaw.com'

Subject: RE: Caterpellar v. Pave Tech Cancellation (Our Ref. 01000.0319-US-TA)

Ms. Bishop,
Please be advised that both Ms. McGinn and I are out of the office. I do know, however, that we will need to reschedule the depositions as both Nerissa and I are out of the office May 1-7. In addition, I believe that we will need to agree to extend the discovery period to schedule the depositions and further depositions on our end. We also might want to discuss some settlement options. I will call you today if I am able or tomorrow to discuss further.

Regards,
Mary Innis

-----Original Message-----

From: Rebecca Bishop [mailto:rbishop@alteralaw.com]

Sent: Wednesday, April 21, 2004 1:38 PM

To: Mary Innis; Nerissa McGinn

Cc: Rebecca Bishop; minnlaw@mn.rr.com

Subject: Caterpellar v. Pave Tech Cancellation (Our Ref. 01000.0319-US-TA)

Ms. Innis and Ms. Coyle McGinn,

Good afternoon. Please find attached and served on you three Notices of Deposition by Pave Tech, Inc. in connection with the above-identified cancellation matter. I am also sending a copy via U.S. mail today. As stated in the notices, Pave Tech is open to discussing alterations in the deposition times and places, but did attempt to notice the deponents in the jurisdiction in which, to the best of our knowledge, they reside.

I intend to call one of you this afternoon to introduce myself and to discuss the notices further. If you have any questions before then, please do not hesitate to contact me at the information below.

Very truly yours,
Rebecca Bishop

ALTERA LAW GROUP
6500 City West Parkway
Suite 100
Eden Prairie, MN 55344-7704
952.253.4100 (direct)
952.912.0574 (fax)
RBishop@AlteraLaw.com
www.AalteraLaw.com

This message is meant to be read only by the recipient(s) listed above, and may contain confidential information and/or information protected by an ATTORNEY/CLIENT PRIVILEGE. If you have received this message in error, please delete all copies of this message and contact us at 952-253-4100. Thank you.

Exhibit D

LOEB&LOEB LLP

A LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

200 S. WACKER DRIVE
SUITE 3100
CHICAGO, IL 60606-5867

TELEPHONE: 312.674.4780
FACSIMILE: 312.674.4779
www.loeb.com

Direct Dial: 312-674-4784
e-mail: nmcginn@loeb.com

April 28, 2004

VIA FACSIMILE & U.S. MAIL

Michael J. O'Loughlin
Michael J. O'Loughlin & Associates, P.A.
400 South 4th Street
1012 Grain Exchange Building
Minneapolis, MN 55415

Rebecca Jo Bishop
Altera Law Group
6500 City West Parkway
Suite 100
Eden Prairie, MN 55322

Re: Caterpillar Inc. v. Pave Tech, Inc.

Dear Michael:

After reviewing the deposition testimony of Stephen Jones and Robert Cramer, Caterpillar believes that the deposition testimony establishes that there is a likelihood of confusion between the Caterpillar Marks and Pave Tech's PAVERCAT mark. The most damning of the evidence against Pave Tech is the fact that one of Pave Tech's 30(b)(6) witnesses admitted that there is a possibility of confusion between the two marks. In his deposition, Bob Cramer admitted that he believed there was a possibility that attendees at trade shows might mistakenly believe that the PAVERCAT product was somehow associated with Caterpillar. Cramer, p. 34-35.

In addition to this admission, Caterpillar also believes the deposition testimony demonstrates a likelihood of confusion between the PAVERCAT and the Caterpillar Marks because the marks, the products sold in connection with the marks, and the markets in which the products are sold are confusingly similar. First, the addition of the descriptor "paver" does not sufficiently distinguish the PAVERCAT mark from the Caterpillar Marks. The only difference between the CAT and PAVERCAT marks is the word "paver" which Pave Tech has admitted is generic for the type of brick used in segmental paving. Jones, p. 11, 16-17; Cramer, p. 47. The Board repeatedly has ruled that the combination of a descriptive or generic term such as "paver" with a famous mark such as the CAT mark does not adequately distinguish the challenged mark from the CAT mark. *Caterpillar Inc. v. Gehl Company*, 177 U.S.P.Q. 343 (TTAB 1973) (holding that Caterpillar's mark CAT and respondent's mark HYDRACAT were

LOS ANGELES
NEW YORK
CHICAGO
NASHVILLE

Michael J. O'Loughlin
Rebecca Jo Bishop
April 28, 2004
Page 2

confusingly similar); *Caterpillar v. Electric Carrier Corp.*, 201 U.S.P.Q. 778 (T.T.A.B. 1978) (sustaining Caterpillar's opposition against applicant's mark ELECTRICAT).

Moreover, Pave Tech has a family of marks which combine two generic terms such as the following:

1. PAVEREXTRACTOR – a tool used to extract pavers
2. PAVERCART – a cart used to transport pavers
3. PAVERADJUSTER – a tool used to adjust pavers.

Similar to Pave Tech's other marks, Caterpillar believes that the PAVERCAT mark is a combination of two terms being used descriptively. As admitted by Pave Tech, the term "paver" is descriptive of the type of bricks used in the segmental paving industry. Moreover, both Stephen Jones and Bob Cramer admitted that CAT is a well-known or famous brand name for heavy equipment. Cramer, p. 48; Jones, p. 42-43. Therefore, Pave Tech is using the term "cat" to intentionally trade on the goodwill of the Caterpillar Marks in connection with heavy equipment.

Second, the PAVERCAT and Caterpillar products are confusingly similar. Despite the fact that Pave Tech attempted to distinguish the PAVERCAT product from a Caterpillar skid steer loader, Bob Cramer admitted during his deposition that both a skid steer loader and a PAVERCAT perform some of the same functions – back dragging and moving pavers. Cramer, p. 47. Moreover, Pave Tech admitted that Pave Tech has used and continues to use skid steer loaders instead of the PAVERCAT product for installing segmental pavers and in demonstrations. Jones, p. 75; Cramer, p. 9-18.

Third, the PAVERCAT and Caterpillar products are sold in the same market. Pave Tech attempted to distinguish Caterpillar markets by claiming that the target market for the PAVERCAT is the small, niche segmental paver market. However, as admitted by Stephen Jones, this niche market is a subset of the general construction and landscaping markets – both of which are Caterpillar target markets. Jones, p. 71-72. In addition to this admission, it is clear from Bob Cramer's testimony that Caterpillar and Pave Tech's marketing efforts overlap. Bob Cramer, Pave Tech's

Michael J. O'Loughlin
Rebecca Jo Bishop
April 28, 2004
Page 3

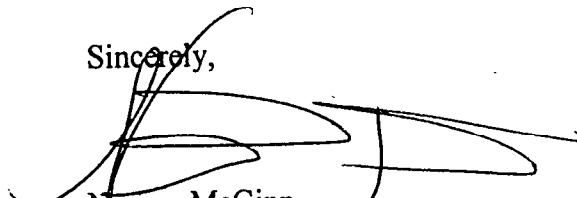
30(b)(6) witness on trade shows, admitted that Caterpillar and Pave Tech attended the same trade shows. Cramer, p. 34. The trade shows which both Caterpillar and Pave Tech attended include the following: the World of Concrete 2000 (which is the first trade show where Pave Tech first introduced the PAVERCAT); the World of Concrete 2001, the Green Industry Expo 2002, and the Green Industry Expo 2003. Cramer, p. 9-18, 23-24, 33, 39-40. Therefore, Caterpillar and Pave Tech's markets overlap.

Because the deposition testimony strongly supports Caterpillar's arguments that there is a likelihood of confusion between the marks, Caterpillar suggests settling this matter. Caterpillar has attached a proposed settlement agreement to this letter as Exhibit 1.

Caterpillar believes settling this matter before either party incurs any additional discovery expenses will be best for both parties. In addition, Caterpillar believes that settlement in this action is particularly attractive for Pave Tech since it is no longer using the PAVERCAT mark and has no plans to use the PAVERCAT mark in the future. However, Caterpillar would be willing to discuss an appropriate phase out period if necessary.

If Pave Tech does not agree to the terms of the attached settlement agreement, Caterpillar intends to aggressively proceed with the outstanding discovery issues. This would include deposing both Glenn Wroblewski and Dale Sopkowiak. We have attached notices of deposition as Exhibit 2 for both of these witnesses with tentative dates for the depositions that we can discuss in the future. Caterpillar would like to conduct these depositions in early May if Pave Tech does not agree to settle this matter by that time.

Sincerely,



Nerissa McGinn
for Loeb & Loeb LLP

Exhibit E

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2,684,138: PAVERCAT
Registered on the Principal Register on February 4, 2003, in International Class 7

CATERPILLAR INC.,)	
)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 41,776
)	
PAVE TECH, INC.,)	
)	
Registrant.)	
)	

DECLARATION OF REBECCA J. BISHOP

1. I am an attorney with Altera Law Group, LLC, 6500 City West Parkway, Suite 100, Eden Prairie, MN 55344. Steve Jones, President of Pave Tech, Inc. ("Pave Tech") recently retained Altera Law Group to work in conjunction with Michael J. O'Loughlin in the above-identified matter. I am the primary attorney at Altera Law Group involved in this matter.

2. This declaration is being offered to support Pave Tech's Response to Caterpillar's Motion for Protective Order and Pave Tech's Response to Caterpillar's Motion for Extension of Discovery and Testimony Periods. I have personal knowledge of the facts set forth herein and can testify competently hereto.

3. The substance of this declaration is expressly limited to the issue of whether I orally stipulated to an extension of the discovery deadline past May 5, 2004. By declaring as follows, I do not intend to reveal any client confidences in violation of Pave Tech's attorney-client privilege. To the extent this declaration may necessarily reveal such confidences, any

breach to Pave Tech's attorney-client privilege is limited to the specific issue of my discussions with Pave Tech regarding a stipulation to an extension of the discovery period past May 5, 2004.

4. At no time prior to April 29, 2004 did I receive authority from Pave Tech to agree to an extension of the discovery period, as requested by Caterpillar. Given that I was brought into this case fairly recently and my knowledge of the case is new, I was extremely careful to discuss all aspects of this case with my client and to receive full authority to act on behalf of my client before taking any actions in the case. Moreover, I was extremely careful to relay to counsel for Caterpillar that I did not have authority to act on behalf of my client when I, indeed, did not yet have authority. As detailed below, I specifically told counsel for Caterpillar, several times, that I could not agree to an extension of time until I discussed the matter with my client.

5. On April 21, 2004, Pave Tech served three deposition notices on Caterpillar, noticing depositions to be taken on May 3, 4 and 5, 2004. I note that by order of the Trademark Trial and Appeal Board, the discovery period in this matter was set to close on May 5, 2004.

6. On April 22, 2004, I received an e-mail from counsel for Caterpillar stating as follows:

Please be advised that both Ms. McGinn and I are out of the office. I do know, however, that we will need to reschedule the depositions as both Nerissa and I are out of the office May 1-7. In addition, I believe that we will need to agree to extend the discovery period to schedule the depositions and further depositions on our end. We also might want to discuss some settlement options. I will call you today if I am able or tomorrow to discuss further.

7. Shortly thereafter, I telephoned Steve Jones, President of Pave Tech, Inc., to discuss the advantages and disadvantages of stipulating to an extension of the discovery period in this case. Mr. Jones instructed me to call counsel for Caterpillar to get more details about their

request so that he could make a more informed decision. Specifically, Mr. Jones did not authorize me to agree to an extension of the discovery period.

8. For the next week, I diligently attempted to contact counsel for Caterpillar to no avail. On April 27, 2004, I finally spoke with Nerissa Coyle McGinn, counsel for Caterpillar, regarding the deposition schedules, settlement and Caterpillar's request for an extension of time. Ms. McGinn indicated that Caterpillar wanted a 60-day extension of time in order to take depositions in addition to the two depositions it had already conducted in February. With respect to Caterpillar's request for an extension of the discovery period, I indicated that 60 days sounded a bit excessive, but 30 days was perhaps a more realistic request. As my client had not given me authority to agree to a stipulation of *any* duration, *I specifically stated*, "60 days sounds excessive, I have no problem with 30 days, but *I cannot agree to anything without discussing this with my client first.*" To be clear, I explicitly stated at least one more time during this conversation that I could not agree to an extension of the discovery period before speaking with my client. Ms. McGinn indicated that Caterpillar would be sending additional information to Pave Tech very shortly, perhaps within a day or two.

9. Immediately thereafter, I called my client to relay the information obtained during the telephone call with Caterpillar. I reiterated to Mr. Jones that Caterpillar's request for a 60-day extension sounded excessive, 30 days sounded a bit more reasonable, but that the ultimate decision rested with Pave Tech. Mr. Jones stated that he wished to reserve making a final decision until we received the additional information from Caterpillar.

10. Two days later, on April 29, 2004, I received a fax from Caterpillar that included two Notices of Deposition to be taken outside of the discovery period, despite the fact that Pave Tech had not stipulated to an extension of the discovery period. Mr. Jones happened to be in

Altera's offices at that time, so I discussed the fax with my client and Ms. McDaniel immediately. Given the untimely deposition notices of Caterpillar coupled with the outstanding issue of Pave Tech's timely-noticed depositions that needed to be rescheduled, Ms. McDaniel and I suggested we discuss the matter further. My client instructed me to call him that afternoon to make a final decision.

11. When I spoke with Mr. Jones that afternoon, he was clear that he did not wish to agree to an extension of time. Mr. Jones authorized me to contact Caterpillar to relay his final decision and to discuss with Caterpillar alternate dates for Pave Tech's timely-noticed depositions.

12. I then called Ms. McGinn and stated that Pave Tech would not stipulate to an extension of the discovery period. In response, counsel for Caterpillar surprisingly argued that I had somehow already agreed to at least a 30-day extension. I was completely surprised by this allegation. Given the fact that Caterpillar could not take additional depositions without this extension, it was clear that Caterpillar had twisted my words to suit its case and was attempting to coerce me into an extension to which I had distinctly refused. I reminded Ms. McGinn of my specific statement during our earlier conversation that I could not agree to an extension of time without speaking with my client first.

13. In addition, I reminded Ms. McGinn that Pave Tech had timely noticed three depositions for the following week, May 3-5, 2004. Ms. McGinn indicated that counsel for Caterpillar was going to a trademark conference and could not attend. As a courtesy, I offered to unilaterally extend the discovery period so these depositions could be taken at a more convenient time for Caterpillar. Ms. McGinn stated that she would contact me the following day with alternate dates.

14. On April 30, 2004, instead of receiving alternate dates for the Pave Tech depositions, we were served with Caterpillar's Motion for Protective Order and Motion for Extension of Discovery and Testimony Periods.

15. None of the people Pave Tech had noticed for deposition appeared at the required place or time on May 3, 4 or 5, 2004.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date:

May 11, 2004

Rebecca J. Bishop

Rebecca J. Bishop

Exhibit F

(

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2,684,138: PAVERCAT
Registered on the Principal Register on February 4, 2003, in International Class 7

CATERPILLAR INC.,

Petitioner,

v.

PAVE TECH, INC.,

Registrant.

)
)
)
)
) Cancellation No. 41,776
)
)
)
)
)

DECLARATION OF STEVE JONES

1. I am the President and founder of Pave Tech, Inc. ("Pave Tech"), the Registrant in the above-identified Cancellation action.

2. As President of Pave Tech, I am solely responsible for making any and all final decisions regarding the above-identified Cancellation action, and am the sole client contact for outside counsel to discuss this case and to receive authority to act on Pave Tech's behalf in this action.

3. This declaration is being offered to support Pave Tech's Motion to Quash and for Protective Order, Pave Tech's Reply to Caterpillar's Motion for Protective Order and Pave Tech's Response to Caterpillar's Motion for Extension of Discovery and Testimony Periods. I have personal knowledge of the facts set forth herein and can testify competently hereto.

4. The substance of this declaration is expressly limited to the issue of Rebecca J. Bishop's authority to stipulate to an extension of the discovery period past May 5, 2004. By

declaring as follows, I do not intend to waive my attorney-client privilege. To the extent this declaration may operate as such, I am only waiving my attorney-client privilege with respect to the sole issue of my discussions with Ms. Bishop regarding a stipulation to an extension of the discovery period past May 5, 2004.

5. At no time did I ever give Ms. Bishop authority to grant any extensions of the discovery period in this matter without my express instruction. Given Ms. Bishop's recent appearance in this matter, I expected her to, *and she did*, come to me for approval on all significant decisions in this matter, including whether to allow Caterpillar an extension of time to take further depositions of my organization.

6. I was deposed in connection with this matter on February 23, 2004. At the time of my deposition, counsel for Caterpillar indicated that it was interested in discussing settlement, and that it would be sending a settlement proposal "shortly."

7. Based on this representation from Caterpillar's counsel, I instructed my counsel to wait to serve deposition notices.

8. Nearly two months later, Caterpillar had failed to send any sort of settlement offer. As the discovery period in this action was coming to a close, I instructed my outside counsel to serve deposition notices on Caterpillar, such notices being served on April 21, 2004. Had Caterpillar not misrepresented that it would be sending a settlement proposal in February, I would have instructed my counsel to serve deposition notices much earlier.

9. On April 22, 2004, Rebecca Bishop informed me that counsel for Caterpillar contacted her via e-mail earlier that day. Ms. Bishop explained that Caterpillar apparently wished to discuss an extension of the discovery period. We discussed the pros and cons of stipulating to such an extension, and I instructed Ms. Bishop to contact Caterpillar and get more

details about their request before I would make a final decision. Specifically, Ms. Bishop stated that she would make clear to Caterpillar that she had to consult with me before agreeing to any type of extension of time.

10. On April 27, 2004, Ms. Bishop informed me that, after playing phone tag with counsel for Caterpillar for several days, she was finally able to reach Caterpillar's counsel by telephone, at which time counsel for Caterpillar requested a 60-day extension of time. Ms. Bishop stated that she had responded by saying that 60 days sounded excessive, 30 days sounded more reasonable, but that she needed to check with me before agreeing to any sort of extension, exactly as I had instructed. I was not inclined to give Caterpillar an extension, but I decided to wait before coming to a final decision.

11. Two days later, on April 29, 2004, I was at Altera's offices when a fax was delivered to Ms. Bishop from Caterpillar. Based on a review of these materials and further discussion with Ms. Bishop and Karen McDaniel, I again indicated I did not wish to stipulate to an extension of the discovery period. Ms. Bishop and Ms. McDaniel suggested that they discuss some alternative courses of action for proceeding before I made a final decision, and that we would speak again in a few hours.

12. Ms. Bishop called me that afternoon. For a host of reasons, I came to the final decision that Pave Tech did not wish to stipulate to any further extensions of time. I instructed Ms. Bishop to contact counsel for Caterpillar immediately to relay my final decision.

13. Later that same afternoon, Ms. Bishop called me to confirm that she had spoken with counsel for Caterpillar and that she had relayed my final decision. She further stated, surprisingly, that Caterpillar had responded by claiming we had already agreed to an extension of

time two days earlier on April 27, 2004. Ms. Bishop sounded as shocked as I was at Caterpillar's assertion.

14. I certainly never agreed to an extension of time of the discovery period. Based on my discussions with Ms. Bishop, it is clear to me that she never intended to grant such an extension, nor did she actually grant an extension.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: May 11, 2004

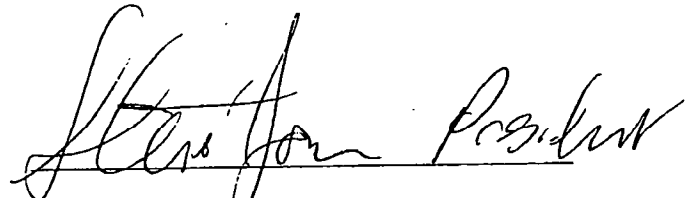

Steve Jones, President of Pave Tech, Inc.

Exhibit G

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2,684,138: PAVERCAT
Registered on the Principal Register on February 4, 2003, in International Class 7

CATERPILLAR INC.,)	
)	
Petitioner,)	
v.)	Cancellation No. 41,776
)	
PAVE TECH, INC.,)	
)	
Registrant.)	

NOTICE OF DEPOSITION

TO: Michael J. O'Loughlin
Michael J. O'Loughlin & Associates, P.A.
1012 Grain Exchange Building
400 South 4th Street
Minneapolis, MN 55415

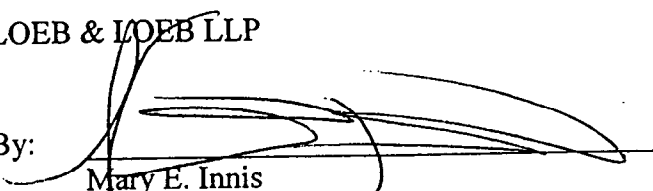
On Wednesday, May 12, 2004, beginning at 9:30 am, Petitioner, Caterpillar Inc., will depose the person identified below before a court reporter or other person qualified to administer oaths. The depositions will take place at Brown and James Reporting, 312 E. Wisconsin Avenue, Suite 608, Milwaukee, WI 53202 and continue until completed. The deposition shall be recorded by means chosen by Petitioner. The deponent shall be the following:

1. Glen Wroblewski

Dated: April 28, 2004

LOEB & LOEB LLP

By:

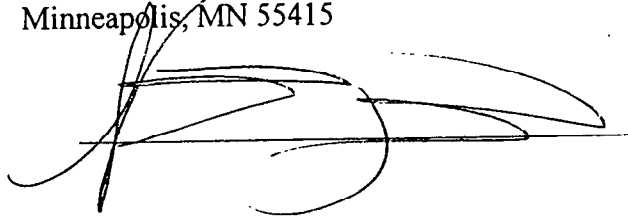

Mary E. Innis
Nerissa Coyle McGinn
200 South Wacker Drive, Suite 3100
Chicago, Illinois 60606
Telephone: (312) 674-4780
Facsimile: (312) 674-4779

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that true and correct copy of the foregoing
AMENDED NOTICE OF DEPOSITION was served via facsimile and U.S. Mail on April 28,
2004 to the following counsel of record:

Michael J. O'Loughlin
Michael J. O'Loughlin & Associates, P.A.
1012 Grain Exchange Building
400 South 4th Street
Minneapolis, MN 55415

A handwritten signature in black ink, appearing to be "M. J. O'Loughlin", written over a horizontal line.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 2,684,138: PAVERCAT
Registered on the Principal Register on February 4, 2003, in International Class 7

CATERPILLAR INC.,)
)
) Petitioner,)
v.) Cancellation No. 41,776
)
PAVE TECH, INC.,)
)
) Registrant.)



05-12-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #78

NOTICE OF DEPOSITION

TO: Michael J. O'Loughlin
Michael J. O'Loughlin & Associates, P.A.
1012 Grain Exchange Building
400 South 4th Street
Minneapolis, MN 55415

On Friday, May 14, 2004, beginning at 9:30 am, Petitioner, Caterpillar Inc., will depose the person identified below before a court reporter or other person qualified to administer oaths. The depositions will take place at Lindquist & Vennum P.L.L.P., 4200 IDS Center, 80 South 8th Street, Minneapolis, MN 55402 and continue until completed. The deposition shall be recorded by means chosen by Petitioner. The deponent shall be the following:

1. Dale Sapkowiak

Dated: April 28, 2004

LOEB & LOEB LLP

By: _____

Mary E. Innis
Nerissa Coyle McGinn
200 South Wacker Drive, Suite 3100
Chicago, Illinois 60606
Telephone: (312) 674-4780
Facsimile: (312) 674-4779

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that true and correct copy of the foregoing
AMENDED NOTICE OF DEPOSITION was served via facsimile and U.S. Mail on April 28,
2004 to the following counsel of record:

Michael J. O'Loughlin
Michael J. O'Loughlin & Associates, P.A.
1012 Grain Exchange Building
400 South 4th Street
Minneapolis, MN 55415

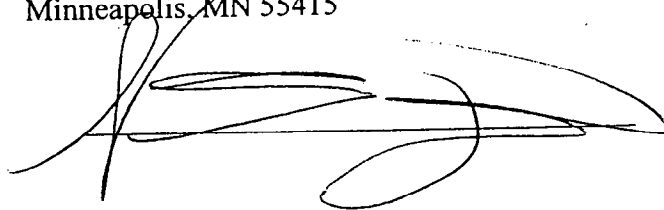
A handwritten signature in black ink, appearing to be "Michael J. O'Loughlin", written over a horizontal line.

Exhibit H



ALTERA

L A W G R O U P L L C

Direct Dial: (952) 253-4124
E-Mail: rblshop@alteralaw.com

April 29, 2004

Mary E. Innis
Nerissa Coyle McGinn
Loeb & Loeb LLP
200 South Wacker Drive, Ste. 3100
Chicago, Illinois 60606

Re: Our Reference: 01000.0319-US-TA
Caterpillar v. Pave Tech Cancellation

Ms. Innis and Ms. Coyle McGinn:

This letter is to discuss the current issue between the parties in the above-identified matter and to memorialize the content of my telephone conversation with Ms. Coyle McGinn earlier today.

In sum, Caterpillar took two depositions of Pave Tech, Inc. in February of 2004. When Pave Tech noticed its depositions of Caterpillar, the details of which are set out below, Caterpillar indicated that the noticed dates pose a problem as its attorneys wish to attend a trademark conference. Pave Tech is willing to agree to a unilateral extension of time to accommodate Caterpillar's counsels' schedule, but is prepared to proceed with the depositions as noticed. At the same time, Caterpillar just noticed its *second* round of depositions to take place well outside of the discovery deadline, and requests that Pave Tech agree to an extension of time to allow for Caterpillar's depositions.

By way of background, I presented three deposition notices to you on April 21, 2004 for depositions to be held on May 3, 4 and 5, 2004. I note specifically that discovery in this matter is scheduled to close on May 5, 2004. Subsequently, Ms. Innis informed me by e-mail that those dates may pose a problem.

Intellectual Property Law
5500 City West Parkway, Suite 100
Minneapolis, MN 55344 USA

telephone: 952.253.4100
fax: 952.917.0574
e-mail: mail@alteralaw.com



Ms. Coyle McGinn and I were able to connect on April 27, 2004, at which time we discussed the possibility of an extension of the discovery deadline, and if an extension were agreed upon, whether it would be 30 or 60 days in duration. At no time during this conversation did I agree to any duration of an extension, and in fact I stated emphatically that I needed to discuss the issue with my client before a final agreement could be reached.

Ms. Coyle McGinn and I also discussed the possibility of settlement, and Ms. Coyle McGinn stated that a settlement offer by Caterpillar had been sitting in her offices for some time, but that the letter would be finalized and sent shortly. We agreed that settlement was open for discussion and that I would seriously discuss the letter with my client when it arrived.

The above-referenced settlement proposal arrived this morning, at which time I reviewed it with my client. Also included with the proposal were two deposition notices, indicating that Caterpillar wishes to take additional depositions on May 12, 2004 and May 14, 2004, despite the fact that discovery is set to close on May 5, 2004.

As we discussed earlier today, my client has declined to stipulate to an extension of the discovery deadline. Although Ms. Coyle McGinn indicated that an extension would allow for further settlement discussions, settlement can be discussed at any time – not merely during the discovery phase of the Cancellation. Accordingly, my client feels that the only purpose served by extending the discovery deadline would be to allow Caterpillar to take additional depositions. Moreover, Ms. Coyle McGinn indicated to me on the phone that the purpose of the two additional depositions is to discover information not obtained in its initial depositions. These first depositions, however, took place in February. Caterpillar has had more than adequate time to notice additional depositions. Pending settlement discussions, if any, need not bring discovery to a standstill.

Nonetheless, there are still three depositions noticed for next Monday through Wednesday which we understand pose a problem for Caterpillar as its attorneys wish to attend the International Trademark Association Conference. We are prepared to proceed with the depositions as scheduled, but are willing to stipulate to a unilateral extension of the discovery period to accommodate Caterpillar's counsels' schedules. Ms. Coyle McGinn indicated that Ms. Innis is out of the office today, but that I could expect a proposal as to alternate dates sometime tomorrow.

As for today's settlement discussions, I have reviewed your settlement proposal with my client, who is unwilling to accept without some offer of monetary compensation

ALTERA

LAW GROUP LLC



made by Caterpillar. We remain open to settlement discussions, but I note that financial recompense will be a key component for my client.

I look forward to hearing from you tomorrow as to alternate dates for Pave Tech's depositions.

Very truly yours;

Rebecca J. Bishop

cc: Michael J. O'Loughlin
Michael J. O'Loughlin & Associates, P.A.
1012 Grain Exchange Building
400 South Fourth Street
Minneapolis, MN 55415

ALTERA

LAW GROUP LLC

CERTIFICATE OF SERVICE

I, Rebecca J. Bishop, hereby certify that on this 11th day of May, 2004, a true and correct copy of the foregoing document, PAVE TECH'S BRIEF IN RESPONSE TO CATERPILLAR'S MOTION FOR PROTECTIVE ORDER, including all Exhibits, was served via facsimile and first class mail, postage prepaid, on:

Mary E. Innis
Nerissa Coyle McGinn
LOEB & LOEB LLP
200 South Wacker Drive
Suite 3100
Chicago, Illinois 60606
(312) 674-4780
(312) ~~647~~-4779 (fax)
674

and by facsimile on:

Michael J. O'Loughlin
MICHAEL J. O'LOUGHLIN & ASSOC. P.A.
400 South 4th Street
1012 Grain Exchange Building
Minneapolis, MN 55415
(612) 342-0351
(612) 342-2399 (fax)


Rebecca J. Bishop